

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**  
**PROCEDURAL POLICIES FOR LOCAL PROGRAM REVIEW**  
**(Adopted June 18, 2007)**

This document amends and repeals the Board's Local Program Compliance Evaluation Procedures and Policies, adopted September 2002 (Guidance Document No. DCR-CBLAB-008) and the Board's Procedural Policies for Local Program Reviews, adopted March 19, 2001 (Guidance Document No. DCR-CBLAB-010).

**Board Program Review Committees**

1. The Board Review Committees (Committees) are comprised of the Southern Area Review Committee and the Northern Area Review Committee. The Committees will set standard meeting times and establish yearly meeting calendars. The Committees may set additional meetings outside of their established schedules to facilitate timely review of local programs.
2. The Department staff will draft the tentative agendas for each Committee's meetings. The Department staff will provide Committee members with staff reports and pertinent supporting materials for each local program on the agenda not less than fifteen (15) days prior to meetings.
3. The Committees will hear presentations by Department staff and local governments in addition to reviewing reports and supporting materials at meetings.
4. The Committees will make recommendations to the Board based on evaluation of staff reports, supporting materials and testimony; or, if necessary, the Committees will request additional documentation from staff or the local government before making a decision and thus defer action. Department staff will record minutes for each Committee meeting.

**Preliminary Consistency Reviews**

1. Upon request by a local government, a preliminary consistency review will be conducted provided the local program proposal is in final draft form, having been reviewed and recommended for adoption by the local planning commission or when requested as a part of the local planning commission workshop/review process.
2. Upon receipt of: (1) a written request by the local government, and (2) all proposed documents for review, the Department staff will evaluate the local government program using the consistency review checklist and will prepare a draft staff report.
3. The process for preliminary review by the Board of a local program proposal will be the same as for Final Consistency Reviews.

## **Final Consistency Reviews**

1. The Department staff will evaluate each adopted local government program using the consistency review checklist or findings of the preliminary review, where applicable, and prepare a draft staff report. The draft staff report will include a staff recommendation for either a finding of program consistency or a finding of consistent with conditions along with recommended conditions to be addressed by the locality to ensure consistency. The draft staff report will include the reasons for any recommendation. The staff report may also include suggestions which are desirable for water quality protection but not necessary for consistency. Areas where additional information or clarification of the local program are needed will also be identified.
2. The draft staff report will be sent to the appropriate Committee and the local government not less than fifteen (15) days prior to the scheduled Committee meeting. The letter will notify the local government of its opportunity to address the Committee.
3. At its meeting, the Committee will hear a presentation by Department staff and by representatives of the local government. The Committee may find it necessary to request additional documentation from Department staff or the local government before making its recommendation. In such cases, the Committee may elect to defer its finding until a later meeting. Based on the information in the draft staff report and testimony presented by Department staff and local government representatives, the Committee will make a recommendation for a finding by the Board. A final staff report for Board Review will be prepared to include the Committee's recommendation.
4. The Department staff will prepare the final staff report and the local government will be notified of the Board's upcoming consideration of the final staff report and the Committee's recommendation. This notice shall advise the locality of its right to appear, either in person or by counsel or other representative, before the Board at a time and place specified for the presentation of factual data, argument and proof in connection with the Board's review as specified by the informal fact-finding proceeding requirements of the Administrative Process Act, Code of Virginia § 2.2-4019. The final report and notice will be sent to the local government no later than twenty (20) days prior to the Board's meeting at which the local program review will be considered. To facilitate timely Board reviews, this notification period may be modified in cases where a local government agrees in writing to waive the notice period specified by 9VAC10-20-250.
5. The Board will take into consideration the staff recommendation, the recommendation of the Committee, the findings of the preliminary review, where applicable, and presentations and proof offered by the local government, both written and oral, in making a finding on local program consistency.
6. The Board may find it necessary to request additional documentation from Department staff or the local government. In such cases, the Board may elect to defer its finding until a later meeting.

7. When the Board determines that no changes are necessary for local program consistency, the Board will make a finding of consistency. The Department will notify the local government of the Board's finding in writing within the timeframe specified by Code of Virginia § 2.2-4021.
8. When the Board determines that changes are necessary for local program consistency, the Board may make a finding of consistent with conditions and allow the local government to complete the necessary modifications within a prescribed period of time. As part of the finding, the Board will determine what changes are necessary and set a compliance deadline for revising the local program. The Department will notify the local government of the Board's finding and the compliance deadline in writing within the timeframe specified by Code of Virginia § 2.2-4021. Such notification shall also include the locality's right to appeal the Board's action.
9. When the Board determines that a local program is inconsistent, the Board will make a finding of inconsistency. As part of the finding, the Board will determine what changes are necessary and set a final deadline for the local government to make the necessary changes. The Department will notify the local government of the finding and final deadline in writing within the timeframe specified by Code of Virginia § 2.2-4021. Such notification shall also include the locality's right to appeal the Board's action.

#### **Review of Programs Found Consistent with Conditions and Inconsistent**

1. Department staff will discuss with the local government its progress in making any program modifications identified by the Board at least ninety (90) days prior to the Board's deadline for necessary program modifications, unless a shorter time period for compliance is set by the Board.
2. When a local government indicates it needs additional time and provides sufficient justification and a revised schedule to accomplish the required program modifications, its request shall be considered by the appropriate Committee, which shall make a recommendation to the Board. A locality that disagrees with the Committee's recommendation may address the Board during its review of the matter.
3. Review of programs found consistent with conditions will generally follow the steps for Final Consistency Reviews. Where the local government has accomplished all necessary program modifications, the Department staff may prepare a simplified staff report for both the Committee and the Board.
4. The Committee will evaluate the local government's program, consider the Department staff's recommendation and any testimony of the local government, if present, and make a recommendation as to whether the program is consistent or inconsistent. If the local program is inconsistent, the Committee shall identify remaining items that need to be

addressed for consistency and recommend a final compliance date or recommend an extension of the deadline for completion of the necessary program modifications.

5. The Board will take into consideration the Department staff's recommendations, the recommendation of the Committee, and presentations and proof offered by the local government in making a decision on local program consistency and/or extending or establishing a deadline.
6. For local programs previously found inconsistent and where the local government does not adopt the necessary program modifications or request and receive a deadline extension from the Board, the matter will be scheduled for review and action at the next meeting of the appropriate Committee and the Board. Notice regarding the meetings and recommended action will be provided to the locality in the same manner as for any Final Consistency Review. The Board may either defer action in order to consider additional information or request the Office of the Attorney General to take legal action to enforce compliance with the Act and regulations.

#### **Review of Modifications to Local Programs Found Consistent**

1. The Department staff will evaluate any modifications to local government programs found consistent. Staff evaluations will occur in a timely manner after a modification is adopted by the locality. After evaluating program modifications, the Department staff will prepare a draft staff report addressing the modification. In addition to staff recommendations relative to program consistency or inconsistency, the staff analysis will include a recommendation relative to the program modification's status as either minor or major. The Department staff will refer to the Minor Program Modifications and Major Program Modifications in making such recommendations.
2. Board review of major program modifications will generally follow the steps for Final Review, including review and recommendation by the appropriate Committee. A minor modification may be approved by the Director.

#### **Minor Program Modifications**

1. Minor modifications to a local program will generally include amendments that do not affect the application of the eleven performance criteria or the designation of Chesapeake Bay Preservation Areas and/or Intensely Developed Areas. Minor modifications would consist of any changes recommended for clarification in the Board's consistency review of a local program and any additional changes that fall under the following general categories: process, clarification, reorganization, and specification. Local adoption of the civil penalties and civil charges provisions as found in the Act is considered a minor amendment.
2. Minor modifications involving process are those that relate to a local government's process for evaluating private development projects, such as changes to the timing of

submissions or to the assignment of personnel responsible for review and approvals. For example, a local government may reorganize the community development departments and replace Engineering as the administrative authority over the locality's site plan review process with Planning. Changes to the local ordinance to reflect such reassignments or other changes in the process are minor modifications. Changes to the local exception process that involve a new sequencing of review requests for exceptions will generally be considered minor modifications. However, changes to the criteria for exceptions or required findings associated with development approval or changes to the committee, board, or body that hears exceptions are considered major modifications.

3. Minor modifications involving clarification are generally "housekeeping" in character, such as correcting typographical errors and amending citations for reference materials in ordinances. Such modifications could also involve minor word changes to clarify the intent of ordinance requirements. Typically, clarifying changes are a result of the locality's experience in implementing the ordinance.
4. Minor modifications involving reorganization are those that affect the structure and numbering of an ordinance text. For example, some local governments find it beneficial to group all exemption language in the Regulations into one section.
5. Minor modifications involving specification are those that establish more information or detail for particular sections of an ordinance. For example, a local government may add specific standards to clarify how an applicant complies with the requirement to minimize impervious surface. These standards relieve the local administrator from having to interpret compliance on a case-by-case basis. Other expected modifications of this nature would involve specifying information items required to be submitted as part of a site plan.
6. The Director shall document approval of all minor modifications through a letter to the locality, with a copy to the Board, acknowledging the local action and approval. The Department shall provide a summary of all minor modifications to the Board as a staff update at each Board meeting.

### **Major Program Modifications**

1. Major modifications to a local program are generally those that revise (i) the designation of the local Chesapeake Bay Preservation Area or an Intensely Developed Area, (ii) the application of the eleven performance criteria or, (iii) the process for granting exceptions or administrative waivers.
2. Major modifications that revise the local Chesapeake Bay Preservation Area (CBPA) designation could involve changes to either the Resource Protection Area or Resource Management Area. Similarly, modifications or additions to locally designated Intensely Developed Areas will require Board review. A change to the boundary between the RPA and the RMA based upon a site-specific delineation, as provided for in a local program ordinance that has been found consistent by the Board, is not considered a program

modification and is not subject to review. However, the deletion of an RPA feature from a site or the expansion or contraction of the CBPA boundary is a major modification.

3. Major modifications that revise the application of the eleven performance criteria could involve deletion of one of the standards from the local Bay Act ordinance or the amendment of the level of performance of one of the standards. For example, if a local government removes the stormwater management criteria from its Bay Act ordinance because it has a one acre minimum lot size in its subdivision ordinance, the local program would need to be reviewed by the Board. Similarly, if a locality amends the five-year septic pump-out requirement in the Regulations to a ten-year pump-out requirement in the local ordinance, the modification would be considered major and require a consistency review by the Board.
4. Modifications that substantially revise the local exception process will be considered major in nature. For example, changes to the exception process that expand the locality's administrative exceptions to include additional buffer encroachment, on lots created prior to the effective date of the local ordinance would require a consistency review by the Board.
5. Any other modifications that do not qualify as minor will be considered major.

### **Local Program Compliance Review Procedures**

The following review procedures are designed to take into account not only the initial phase of the Compliance Review process required under the Act and Regulations, but are also designed to be used in the ongoing review of local programs.

1. Based on a review of the information gathered by the locality, interviews with local staff, completion of the *Local Program Compliance Evaluation Checklists*, and field investigations, the locality liaison, with assistance from other Department staff, will evaluate each local government program. At the conclusion of the local program review the Department staff will review the *Checklist* with the local government contact and provide a copy of the completed *Checklist* to the local contact.

The Department staff will prepare a draft *Initial Local Program Compliance Evaluation Staff Report* regarding the local program's compliance with the Act and Regulations. This report will include a staff recommendation as to the compliance of each element of the local program that is reviewed and a statement of the reason(s) behind these recommendations. The report will also include conditions for local program modifications that the Department staff feels are necessary for compliance and suggestions that are desirable for water quality protection but not necessary for compliance. Areas where additional information or clarifications on the local program are needed will also be identified.

2. The *Initial Local Program Compliance Evaluation Staff Report* and resolution will be forwarded to the appropriate Committee and the local government not less than fifteen (15) days prior to the scheduled Committee meeting. The transmittal letter will notify the local government of its opportunity to address the Committee and offer testimony or exhibits on its own behalf.
3. At its meeting, the Committee will hear a presentation by Department staff and by representatives of the local government, if in attendance. The Committee may find it necessary to request additional documentation or testimony from either staff or the local government prior to making a compliance determination.
4. The Department staff will prepare the final staff report and the local government will be notified of the Board's upcoming consideration of the final staff report and the Committee's recommendation. This notice shall advise the locality of its right to appear, either in person or by counsel or other representative, before the Board at a time and place specified for the presentation of factual data, argument and proof in connection with the Board's review as specified by the informal fact-finding proceeding requirements of the Administrative Process Act, Code of Virginia § 2.2-4019. The final report and notice will be sent to the local government no later than twenty (20) days prior to the Board's meeting at which the local program review will be considered. To facilitate timely Board reviews, this notification period may be modified in cases where a local government agrees in writing to waive the notice period specified by 9VAC10-20-250.
5. In making a finding on local program compliance, the Board will take into consideration the Department staff's recommended conditions and analysis, the recommended conditions of the Committees', and presentations and proof offered by the local government. The Board may find it necessary to request additional information from either the staff or local government, and may defer its finding until this information has been provided.
6. When the Board determines that no changes are needed in the local program, it will make a finding that the local program implementation complies with the Act and Regulations. The Department staff will notify the local government of the Board's findings in writing within the timeframe specified by Code of Virginia § 2.2-4021. This will conclude the initial phase of the compliance review process.
7. When the Board determines that changes are needed in the implementation of the local program, the Board may make a finding that implementation of certain aspects of a local government's Bay Act program do not fully comply and allow the local government to address the required conditions within a prescribed period of time. As part of its findings, the Board will determine what changes are necessary for compliance and will set a corrective action deadline. The Department staff will notify the local government of the Board's findings and the compliance deadline in writing within the timeframe specified by Code of Virginia § 2.2-4021. This written notice shall also set forth the locality's right to appeal the Board's action.

8. The Department staff shall provide an update to the Board at one of their regularly scheduled meetings no less than six months before any corrective action deadline. This update will outline steps taken by the local government to address any recommended condition.
9. In cases where a local government does not address the required conditions in a timely manner, or within the Board established time frame, the Board may make a finding of noncompliance. This finding will include required conditions that a local government must address as well as a final deadline by which the required conditions must be met. When the Board makes a finding of noncompliance, it shall notify the local government of the finding in writing within the timeframe specified by Code of Virginia § 2.2-4021. The notification shall also include the required conditions, the final deadline, and the possible legal actions that may be available to the Board should the final deadline not be met.
10. Upon successful completion of all recommendations for compliance, the Department staff shall prepare a memorandum to the Board informing it of the local program status and shall prepare a resolution for Board approval confirming program compliance.
11. For local programs previously found noncompliant and where the local government does not adopt the necessary program modifications or request and receive a deadline extension from the Board, the matter will be scheduled for review and action at the next meeting of the appropriate Committee and the Board. Notice regarding the meetings and recommended action will be provided to the locality in the same manner as for any Compliance Review. The Board may either defer action in order to consider additional information or request the Office of the Attorney General to take legal action to enforce compliance with the Act and regulations.
12. A finding of compliance relative to a local program element shall not be construed to mean a finding of compliance with all other elements of the local program that were not evaluated during the Compliance Evaluation process. The Chesapeake Bay Local Assistance Board may evaluate local program implementation of other program elements according to an established schedule, or as changes in policy, law, or regulation warrant. A Compliance Evaluation may also be initiated if the Board identifies potential areas of noncompliance through observations in the field, complaints or other means.
13. When circumstances indicate that a local government, previously found compliant, is no longer implementing all elements of its Bay Act program in compliance with the Act and Regulations, the Board may authorize the Department staff to initiate a compliance review of all or portions of implementation of a local Bay Act program.

This document was adopted by the Board on June 18, 2007 and may be amended or repealed as necessary by the Board.



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Donald W. Davis, Board Chairman